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Edmund G. Brown, Jr.
Governor

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Site No. 02-38-C0133 (XF)
CIWQS Place No. 764059

Sent via electronic mail: No hard copy to follow

Port of San Francisco
Pier 1, San Francisco, CA 94111
Attn.: Mr. Brad Benson
Email: Brad.Benson@sfport.com

AC Event Authority
Attn.: Mr. Craig Thompson
Email: craig.thompson@americascup.com

Subject: Incomplete Application for Water Quality Certification for the 34th America's Cup Races and James R. Herman Cruise Terminal Project, San Francisco County

Dear Mr. Benson and Mr. Thompson:

San Francisco Regional Water Quality Board (Water Board) staff has reviewed the Clean Water Act Section 401 Water Quality Certification Application (Application) submitted for the 34th America's Cup Races and James R. Herman Cruise Terminal Project, San Francisco County (Project). The first phase of the Project will consist of the 34th America's Cup Races and all venues, facilities, and implementation plans needed to conduct the race (AC34 Phase). The second phase of the Project will consist of developing Piers 27-29 into a new cruise terminal.

This letter is being sent to inform you that the Application is incomplete and does not provide sufficient information to determine whether the Project complies with State water quality standards. In addition, this letter outlines the materials still needed to complete the application package and the supplemental information needed to determine whether the Project complies with State water quality standards.

Materials Needed to Complete the Application

Comment 1: Block 2, Applicant's Address

Both the Port of San Francisco and America's Cup Event Authority are listed as the applicants in Box 1 of the Application. Box 2 of the Application, however, only includes the address of the San Francisco Port. As a result, the Application is incomplete (23 CCR § 3856). To complete

the Application, the address of the America's Cup Event Authority must be submitted.

Comment 2: Block 23, Other Permits

The information provided in Box 23 indicates that a Section 404 Permit is being sought for the Project. There is no indication, however, of whether the permits being sought are individual or nationwide permits. In addition, the Application did not include complete copies of the applications for federal licenses/permits being sought. As a result, the Application is incomplete (23 CCR § 3856). To complete the Application, the Port of San Francisco and America's Cup Event Authority must (1) provide us with the type of Section 404 permit being sought (i.e., individual or nationwide, including nationwide number if applicable) and (2) submit complete copies of all applications for federal permits being sought for the Project.

Comment 3: Block 19, Section 6.3 of the Attachment, Mitigation

Section 6.3 of the attachment to the Application (Attachment) proposes removal of creosote piles as compensatory mitigation. Although a list of potential sites for creosote pile removal is provided, the text indicates that viability of each site is currently being investigated. As a result, the exact acres of proposed compensatory mitigation for unavoidable fill impacts are not provided. To complete the Application, the Port of San Francisco and America's Cup Event Authority must provide us with the exact acres of proposed compensatory mitigation for unavoidable fill impacts.

Please also note that the current proposal of cutting or breaking off piles 1 foot below the mud line may be insufficient mitigation because a significant portion of the pile will remain. The Water Board prefers complete pile removal unless it can be demonstrated that complete pile removal is either infeasible or will have substantially greater environmental impacts than cutting piles. In addition, piles that must be cut should be cut at a depth below the active zone of the benthic community. Lastly, before we will accept pile removal as mitigation, we will need a detailed plan specifying:

- The exact location of pile removal;
- The schedule for completing the pile removal;
- The methods for pile removal;
- The methods for replacing lost habitat provided by the piles (if applicable); and
- The best management practices (BMPs) that will be used to avoid and minimize water quality impacts associated with pile removal.

The exact location of pile removal is required to determine whether the mitigation is on-site. On-site compensatory mitigation is preferred and will usually result in lower ratios than off-site

mitigation. The schedule for completing the pile removal is needed because mitigation established prior to initiation of the Project will have less temporal impacts and less uncertainty than mitigation proposed to be implemented after Project completion. As a result, pre-construction compensatory mitigation will generally have lower ratios than post-construction compensatory mitigation. The methods for pile removal are needed by Water Board staff to assess the likelihood of a successful mitigation project. A greater likelihood of success (i.e., less uncertainty) will result in a lower mitigation ratio. The methods for replacing lost habitat are needed by Water Board staff to assess the functional value of the mitigation. A greater functional value will result in a lower mitigation ratio. The BMPs that will be used to avoid and minimize water quality impacts are needed by Water Board staff to assess potential water quality impacts associated with the proposed mitigation. The likelihood, magnitude and duration of potential water quality impacts will determine whether mitigation is acceptable, and if acceptable, will directly affect the mitigation ratio.

Comment 4: Application Fee

The Water Board received an application fee of \$640.00 on June 28, 2011. Water Board staff has determined that the total application fee for the Project is \$1,457.00. Therefore, the Water Board has not received the full application fee for the Project, and the Application is incomplete (23 CCR § 3856). The SFPUC must submit the outstanding application fee amount of \$817 to complete the Application.

Supplemental Information Needed for a Valid Application

Comment 5: Block 15, Sections 3.1.1.1, Port of San Francisco Piers, Water Areas, and Other Facilities

Text in the Attachment indicates that there will be an increase in drinking water and sewer utilities at the America's Cup venues, especially the team bases at Pier 80 and Piers 30-32. Although a new potable water line will be installed at Piers 30-32, there is no indication of the condition of existing drinking water and sewer pipelines or whether these existing lines have the capacity to handle the increase in usage. Water Board staff need to know the condition and capacity of existing pipelines to assess whether the increased usage could lead to discharges of potable water or sewage. Any discharges of potable water (i.e., chlorinated water) or sewage would violate state water quality standards.

Comment 6: Block 15, Section 3.3.1.3 of Attachment, Post-Construction Stormwater

Section 3.3.1.3 of the Attachment indicates that stormwater control plans (SCPs) will be prepared for America's Cup racing events and the James R. Herman Cruise Terminal. The SCPs will be prepared to comply with the San Francisco Stormwater Management Ordinance using the Stormwater Design Guidelines developed by the Port of San Francisco and San Francisco Public

Utilities Commission. Although we appreciate the use of the Stormwater Design Guidelines, to determine whether state water quality standards will be violated by post-construction stormwater, Water Board staff need more information on the content of the SCPs. At a minimum, we need the following information:

- Outlines of the SCPs for both project components;
- Areal extent of new and replaced impervious surfaces from all project activities;
- Stormwater sizing calculations based on the Stormwater Design Guidelines; and
- Opportunities and constraints of various post-construction BMPs, including low impact development techniques.

Outlines of the SCPs will provide us with a general idea of their content. The areal extent of new and replaced impervious surfaces, stormwater sizing calculations, and opportunities and constraints of various post-construction BMPs will provide us with the information that we need to determine whether potential post-construction stormwater impacts will be minimized to the maximum extent practicable.

Comment 7: Block 15, Section 3.3.1.5, Compliance with Industrial Stormwater Permit

Section 3.3.1.5 of the Attachment indicates that the berths along the San Francisco Waterfront may be required to have an industrial permit if boat maintenance activities will occur at these sites. Water Board staff believe that there is a possibility that boat maintenance activities will occur at the berths and anticipate requiring coverage under the Industrial Storm Water General Permit.

Regardless of whether boat maintenance activities will occur at the berths, there is the potential for spectator boats to illicitly discharge sewage. The Application, however, does not discuss this potential water quality impact nor does it provide any mitigation for this impact. Examples of mitigation measures to avoid and minimize impacts associated with illicit discharges of sewage include the following:

- A boater outreach program to inform them of pump out locations and the repercussions of illicitly discharging sewage;
- Providing pump out stations at berths constructed for the America's Cup;
- Providing a portable pump out service for boats at the berths;
- Requiring boats using the berths to place dye tablets in their septic tanks; and
- Monitoring the berths to identify illicit discharges.

Before taking a certification action, we will need information on the measures that will be implemented to avoid and minimize illicit discharges of sewage from spectator boats.

Comment 8: Block 15, Section 3.3.4 of Attachment, Invasive Species Impacts; and Block 16, Section 4.2.2 of Attachment, Avoidance of Invasive Species Impacts

Text in the Attachment indicates that the Project has the potential to introduce new invasive species and/or increase the spread of existing invasive species. To avoid and minimize invasive species impacts during construction and demolition, the Port of San Francisco and America's Cup Event Authority will prepare and implement an Invasive Species Control Plan. To address the potential introduction and spread of invasive species associated with spectator boats, the Port of San Francisco and America's Cup Event Authority will implement an outreach program.

Currently, the information in the application is insufficient to determine whether the outreach program will sufficiently mitigate for potential invasive species impacts from spectator boats. For us to make a determination that state water quality standards will not be violated by invasive species impacts, we need information on the magnitude and probability of invasive species impacts from spectator boats or the likelihood that the outreach program will effectively avoid these impacts. If it does not appear that invasive species impacts can be avoided, then the Port of San Francisco and America's Cup Event Authority will need to propose compensatory mitigation, such as contributing to or conducting an invasive species eradication program.

Comment 9: Block 16, Section 4 of Attachment, Avoidance of Impacts

Section 4 of the Attachment indicates that the Port of San Francisco and America's Cup Event Authority will provide an alternatives analysis under a separate cover. The purpose of this alternatives analysis is to assess whether less environmentally damaging alternatives to the Project or Project components, such as dredging, are available either on- or off-site. Please note that this alternatives analysis needs to be submitted to the Water Board before we issue a 401 Certification, so we can determine whether the Project has avoided and minimized impacts to the maximum extent practicable.

Comment 10: Box 19, Section 6 of Attachment, Mitigation

Section 6 of the Attachment indicates that to mitigate for direct impacts from dredging, the Port of San Francisco and America's Event Authority will fund a portion of the studies on the long-term effects of dredging in the SF Bay. These studies are considered very important by permitting agencies participating in the Long Term Management Strategy for Dredging (LTMS) and are currently unfunded. The application, however, does not include the exact funding amount and the specific study that will be funded. The Water Board may be willing to accept partial funding of an LTMS recommended study as mitigation for dredging impacts, but we need to know the following:

- What study will be funded;
- How much funding will be provided;
- When and where the study will take place; and
- What the mechanism for funding the study will be.

In addition, to mitigate for project-related impacts to eel grass beds, the Port of San Francisco and America's Event Authority will fund an existing or pilot project to restore eel grass. The exact amount of proposed mitigation has not been provided, however, because as pointed out by the applicants, the potential impacts to eel grass beds have not been adequately or accurately defined. Before we can issue the Water Quality Certification, we need to have an accurate and adequate description of potential impacts to eel grass beds and the exact amount, location(s), and methods of the proposed mitigation.

Comment 11: Sections 2.1, 3.1.7, 4.2.4.1 of Attachment, Waste Management Plan

Several sections of the Attachment reference the Waste Management Plan that will be developed to manage litter and human waste. We appreciate that the Port of San Francisco and America's Event Authority will establish a zero waste goal in the Waste Management Plan. In addition to the general elements listed in the Attachment, the Waste Management Plan needs to include an outreach and policing component to encourage spectators to properly dispose of litter and use the sanitary facilities. It will also need a monitoring component to identify challenging areas that may need additional composting and recycling receptacles and/or policing, especially if the Port of San Francisco and America's Event Authority expect to use the 2012 events to improve waste management for the 2013 events. We will also expect the Waste Management Plan to include the estimated number of litter receptacles and sanitary facilities needed for people congregating at official and unofficial spectator areas.

Before taking a certification action, we need to see an outline of the Waste Management Plan that includes all the general elements provided in the application as well as the elements listed above. In addition, we will need a schedule for completing and implementing the Waste Management Plan to ensure that Project will not violate water quality standards as a result of improper waste management.

Comment 12: Box 20, California Environmental Quality Act (CEQA)

The response to Question 20 in the Application indicates that the Draft Environmental Impact Report (EIR) is under preparation. Although CEQA documentation is not required for a complete application, the Water Board must be provided with and have ample time to properly review a final copy of valid CEQA documentation before taking a certification action (23 CCR § 3856). Therefore, a copy of the Final EIR must be provided as soon as it is available.

Closing

Please contact Xavier Fernandez at 510-622-5685 or xafernandez@waterboards.ca.gov with any questions or comments.

Sincerely,

Shin-Roei Lee
Watershed Division Chief

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